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DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-868]

Utility Scale Wind Towers from Canada: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from Canada.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Moses Song, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1121 or (202) 482-7885, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2019, Commerce published the *Preliminary Determination* of the countervailing duty (CVD) investigation, which aligned the final determination in this CVD

investigation with the final determination in the companion antidumping duty (AD) investigation of wind towers from Canada.¹

A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, are discussed in the Issues and Decision Memorandum.² The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation is January 1, 2018 through December 31, 2018.

Scope of the Investigation

The products covered by this investigation are wind towers from Canada. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this investigation, and the concurrent AD and CVD investigations of wind towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam, Commerce did not receive scope comments from interested parties. Accordingly,

¹ See *Utility Scale Wind Towers from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 68126 (December 13, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, "Issues and Decisions Memorandum for the Final Determination of the Countervailing Duty Investigation of Utility Scale Wind Towers from Canada," dated concurrently with, and hereby adopted by, this notice (Issues and Decisions Memorandum).

Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice*.³ Additionally, because we received no scope comments from interested parties for this final determination, we made no changes to the scope of these investigations from that published in the *Preliminary Determination*.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised is attached to this notice as Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.⁴ For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Verification

As provided in section 782(i) of the Act, in February 2020, we conducted verification of the information submitted by the mandatory respondent, Marmen Inc. and Marmen Énergie Inc., and cross-owned affiliate Gestion Marmen (collectively, Marmen), for use in Commerce’s final determination. We used standard verification procedures, including an examination of relevant

³ See *Utility Scale Wind Towers from Canada: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination and Extension of Provisional Measures*, 85 FR 8563 (February 14, 2020).

⁴ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

accounting records and original source documents provided by the respondents.⁵ As explained in the Issues and decision Memorandum, we did not conduct verification of the responses of the Government of Canada, Government of Quebec, or the Government of Ontario.⁶

Changes Since the *Preliminary Determination*

Based on our review and analysis of the comments received from parties and our verification findings, we made certain changes to the subsidy rate calculations for Marmen. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Negative Determination of Critical Circumstances

On February 11, Commerce published a preliminary negative determination of critical circumstances with respect to imports of wind towers from Canada.⁷ In *Preliminary Determinations of Critical Circumstances*, Commerce determined, pursuant to section 703(e)(1) of the Act, that based on information provided in the critical circumstances allegation, critical circumstances did not exist with respect to imports of wind towers from Canada. We received no comments regarding the preliminary negative determination of critical circumstances in this investigation. For this final determination, we continue to find that critical circumstances do not exist with respect to imports of wind towers from Canada. For a full description of the methodology and results of Commerce's analysis, *see Preliminary Determinations of Critical*

⁵ See Memorandum, "Verification of the Questionnaire Responses of Marmen Inc., Marmen Énergie Inc., and Gestion Marmen," dated April 16, 2020.

⁶ See Issues and Decision Memorandum at 3 and Comment 1.

⁷ See *Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam; Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances*, 28 FR 7724 (February 11, 2020) (*Preliminary Determinations of Critical Circumstances*).

Circumstances and the accompanying proprietary Critical Circumstances Calculation

Memorandum.⁸

All-Others Rate

We continue to assign the countervailable subsidy rate calculated for Marmen as the all-others rate applicable to all exporters and/or producers not individually examined.⁹

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated an individual estimated subsidy rate for Marmen. We determine the total estimated net countervailable subsidy rate to be:

Producer/Exporter	Subsidy Rate (percent)
Marmen Inc., Marmen Énergie Inc., and Gestion Marmen Inc. ¹⁰	1.18
All Others	1.18

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of the date of the publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

⁸ See Memorandum, “Calculations for Preliminary Determination of Critical Circumstances in the Countervailing Duty Investigation of Utility-Wind Towers from Canada,” dated February 4, 2020 (Critical Circumstances Calculation Memorandum).

⁹ See *Preliminary Determination*.

¹⁰ As discussed in the *Preliminary Determination*, Commerce found the following companies to be cross-owned with Marmen Inc.: Marmen Énergie, Inc. and Gestion Marmen Inc. No party commented on this finding in the case briefs.

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in the scope of the investigation section, that were entered or withdrawn from warehouse for consumption on or after December 13, 2019, which is the date of the publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 11, 2020, but to continue the suspension of liquidation of all entries from December 13, 2019 through April 10, 2020.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wind towers from Canada no later than 45 days after our final determination. In addition, we are making available to the ITC all non-privileged and

nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: June 29, 2020.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by these investigations consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Further, excluded from the scope of the antidumping duty investigations are any products covered by the existing antidumping duty order on utility scale wind towers from the Socialist Republic of Vietnam. *See* Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order, 78 FR 11150 (February 15, 2013).

Merchandise covered by these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

Appendix II

List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Scope Comments
- V. Use of Facts Otherwise Available
- VI. Subsidies Valuation Information
- VII. Analysis of Programs
- VIII. Analysis of Comments
 - Comment 1: Whether Commerce Should Rely on Facts Available to Determine Non-Countervailability, Non-Use, and Benefits of the Programs Under Investigation in the Absence of the Government Verifications
 - Comment 2: Whether the Federal ACCA and Quebec ACCA for Class 29 Assets Programs are Specific
 - Comment 3: Whether the Additional Depreciation for Class 1 Assets Program is Specific and Provides a Countervailable Benefit
 - Comment 4: Whether the Ontario LCR Program Provided Countervailable Subsidies to Marmen during the POI
 - Comment 5: Whether the Quebec LCR Program Provided Countervailable Subsidies to Marmen during the POI
 - Comment 6: Whether Marmen's Total Sales Denominator Should Be Revised to Reflect Marmen's Total Sales as Expressed in Canadian Dollars
 - Comment 7: Whether Marmen's Other Wind - Time-Billed Activities, Repair Charges, Early Payment Discounts, Deferred Revenue, Inter-Company Revenues, and Other Non-Production Related Income Should Be Included in Marmen's Total Sales Denominator
 - Comment 8: Whether Additional Income Taxes Paid by Marmen during the POI on the Previous Year's GASPÉTC Should Be Deducted from Marmen's POI GASPÉTC Benefit
 - Comment 9: Tax credit for On-The-Job Training
- IX. Recommendation